

Application No.: 10/753,531**Docket No.: 2038-320****REMARKS**

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1-22 are pending in the application. Claims 1-20 remain unchanged notwithstanding the art rejections manifested in the Office Action. New claims 21-22 have been added to provide Applicants with the scope of protection to which they are believed entitled. The new claims find solid support in the original specification and the drawings, especially FIGs. 1-3. The title of the application has been amended to be indicative of the invention to which the claims are directed. No new matter has been introduced through the foregoing amendments.

The new art rejections of claims 1-20 are traversed for the following reasons.

1. With respect to claim 1 which is rejected under 35 U.S.C. 102(b) as being anticipated by *Suzuki* (U.S. Patent No. 5,746,730), Applicants respectfully submit that *Suzuki* fails to teach or disclose the limitation of independent claim 1 that "a first elastic member extending... across said first zone to said third zone."

Applicants note the Examiner's attempt to read gathers, longitudinal barriers 81, 82 on the claimed elastic members. However, Applicants further note that only element 81 of *Suzuki* includes an elastic member (column 9, line 65), whereas element 82 of *Suzuki* includes only a flexible strip member (column 10, line 9). Applicants have carefully reviewed the entire reference of *Suzuki* and still failed to locate any teaching of element 82 being made of or including elastic material. Thus, element 82 of *Suzuki* cannot be read on the claimed elastic members; only element 81 of *Suzuki* can be regarded as the claimed elastic members. However, elastic member 81 of *Suzuki* does not extend across the first zone to the third zone as presently claimed.

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Applicants note the Examiner's arguments that *Suzuki* teaches folding lines L1, L2, which define first and second zones T1, T2. Applicants further note the Examiner's annotated FIG. 22 on page 3 of the Office Action, where the Examiner indicates that first and second zones are defined between respective elements 81, 82. The Examiner's two arguments are inconsistent, and it is unclear as to the Examiner's intent to read which zones, i.e., T1/T2 or the annotated zones, on the claimed zones. Clarification is respectfully requested.

Applicants respectfully submit that in either case, the *Suzuki* element 81 fails to anticipate the claimed elastic member. In particular, if the annotated zones are considered to correspond to the claimed zones, it is apparent from the Examiner's annotated FIG. 22 that elastic member 81 extends along, rather than across, the first zone, and that elastic member 81 does not extend to the third zone as presently claimed. If zones T1/T2 are considered to correspond to the claimed zones, a person of ordinary skill in the art would still recognize that elastic member 81 extends along, rather than across, zones T1/T2 which are integral parts of element 82 (column 10, lines 38-54 and FIGs. 21A, 21B) and, hence, must be completely located inwardly from the respective elastic member 81. The person of ordinary skill in the art would also understand that elastic member 81 does not extend to the third zone, as presently claimed.

2. Still with respect to claim 1, *Suzuki*, as applied by the Examiner, clearly fails to teach or disclose "first folding guide lines extending from two points on said first leg-surrounding lateral margin toward a transverse middle of said crotch region." The folding lines L1m L2 of *Suzuki* are integral parts of element 82 (column 10, lines 38-54 and FIGs. 21A, 21B) and, hence, must be completely located inwardly from the respective leg hole edge 4 as best seen in FIG. 22. Thus, folding lines L1, L2 do not extend from two points on the respective leg hole edge 4, as presently claimed.

For the overwhelming reasons advanced above, Applicants respectfully submit that the anticipatory rejection of independent claim 1 is erroneous and should be withdrawn.

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3. With respect to independent claim 11, *Suzuki* clearly fails to teach or suggest the claimed feature that "first and second elastic members are disposed **between and inwardly spaced from** said longitudinal barriers." The Examiner in the rejection of claim 11 states that *Suzuki* teaches elastic members between elements 81 and 82. As can be seen in the Examiner's annotated FIG. 22, such "elastic members" are not disposed between barriers 82, as presently claimed.

4. Still with respect to independent claim 11, *Suzuki* clearly fails to teach or suggest the claimed feature that "first and second elastic members... **intersecting** said first and second folding lines, respectively." The Examiner is kindly asked to explain how *Suzuki* teaches folding lines L1, L2 intersecting with the "elastic members" located between elements 81, and 82. Applicants respectfully submit that *Suzuki* does not teach such, because folding lines L1, L2 are located on element 82, and are thus completely spaced from the "elastic members."

For the reasons advanced immediately above, Applicants respectfully submit that the rejection of independent claim 11 is erroneous and should be withdrawn.

The rejections of claims 2-10 depending from claim 1 are also erroneous for at least the same reasons advanced with respect to claim 1. The rejections of claims 12-20 depending from claim 11 are also erroneous for at least the same reasons advanced with respect to claim 11. Applicants will nevertheless proceed with their remarks.

5. With respect to claims 2-3 and 12-13, the Examiner's reliance on *In re Aller* is misplaced. It should be noted that while *In re Aller* still remains good law, there are numerous exceptions to this rule e.g. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) discussed in MPEP section 2144.05. II. B. The court in *In re Antonie* stated that "a particular parameter must first be recognized as a **result-effective variable**, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation." *Id.* In this particular case, application of *In re Aller* might be proper

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only if the art, prior to the present invention, has recognized the claimed contraction percentage and stretch stress of the elastic members as result-effective variables. The Examiner has produced no evidence to prove this point.

6. With respect to claims 4 and 14, the Examiner's rejection is not understood. For example, claims 4 requires that the **stiffness in said first and second zones be lower** than in said third zone. The references, as combined by the Examiner, would include the opposite structure in which the third zone has a lower stiffness than the first and second zones. *See* the Office Action, page 7, line 6 from bottom. The rejection of claims 4-5 and 14-15 is therefore erroneous and should be withdrawn.

7. With respect to claims 5, 10, 15 and 20, the Examiner's obviousness rejection lacks a proper suggestion or motivation to combine the references. Applicants note the Examiner's argument that it would have been obvious to combine the references because "both references disclose wearing articles with first and second folding guide lines defining first, second and third zones and first and second elastic member." The Examiner's argument fails to point out *why* (e.g., what advantage the combined device would have had) a person of ordinary skill in the art would have made the suggested combination. The Examiner's argument is therefore unconvincing.

8. With respect to claim 7, *Suzuki* clearly fails to teach or disclose "two longitudinal barriers..., wherein said first and second elastic members are disposed **between and inwardly spaced** from said longitudinal barriers." In *Suzuki* as applied by the Examiner, the longitudinal barrier 82 and "elastic member" 82 are the same. Therefore, one cannot be disposed inwardly from the other in the manner presently claimed.

9. With respect to claim 17, the Examiner's obviousness rejection lacks a proper suggestion or motivation to combine the references. *See* the Office Action at page 9, lines 11-15.

New claims 21 and 22 depend from claim 11 and 1, respectively, and are considered

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patentable at least for the reason advanced with respect to their respective independent claims. Claims 21-22 are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art. In particular, claims 21 and 22 both require that **said core be folded along said folding lines**. In the primary reference of *Suzuki*, the core is not disclosed or suggested to be folded along lines L1, L2.

Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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